

Internal Revenue Service
memorandum

date: MAR 24 1989

to: District Counsel, Los Angeles W:LA

Attn: Rick Gannon

from: Kim A. Palmerino *KAP*
Special Counsel (International) CC:INTL

subject: [REDACTED]

As a follow-up to our discussions in early February, you asked this office to review Issue A of Part II of the international examiner's report on the captioned taxpayer for calendar years [REDACTED]-[REDACTED]. Issue A relates to the objective test under I.R.C. § 954(b)(4) and the regulations thereunder. Specifically, the issue is whether the United States or Abu Dhabi is the appropriate country for purposes of comparison of the hypothetical effective rate of income tax that would have been paid [§ 1.954-4(b)(4)(iii)(b)] to the effective rate of income tax that was actually paid to a country or countries.

CONCLUSION

In the absence of the taxpayer providing evidence to support that the engineering and management services were performed in Abu Dhabi (see page six of the RAR), we agree with the international examiner that the services should be viewed as having been performed in the United States by [REDACTED] through its subcontractor [REDACTED]. Thus, the United States is the place where the services were performed (for purposes of § 1.954-4(b)(4)(iii)(b), and, the United States is the proper country to be used in ascertaining the hypothetical rate of tax. To the extent the taxpayer is able to satisfy you that a portion of the engineering and management services were performed in Abu Dhabi, then Abu Dhabi is the proper country to be used in ascertaining the hypothetical rate of tax for purposes of § 1.954-4(b)(4)(iii)(b). Use of Abu Dhabi as the proper country of comparison is limited to the amount of foreign base company services income allocable to the services performed in Abu Dhabi.

Thus, if you determine some of the engineering and management services were performed in the United States and some of those services were performed in Abu Dhabi, both the United States and Abu Dhabi should be used for countries of comparison of the effective hypothetical tax rate for purposes of § 1.954-4(b)(4)(iii)(b).

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